

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0534
STATE GROSS RETAIL TAX
For Years 2002, 2003, AND 2004**

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ISSUES

I. State Gross Retail Tax—Adequate Documentation

Authority: 45 IAC 15-5-4; IC § 6-8.1-5-1; IC § 6-8.1-5-4

Taxpayer protests the proposed assessments of Indiana's State Gross Retail tax.

STATEMENT OF FACTS

Taxpayer is a retail merchant of landscaping and gardening products. An audit found that in some instances the taxpayer sold these products without collecting the required sales tax and without an exemption certificate from the purchaser. Additionally, taxpayer purchased some items for use in the business without paying sales tax or self assessing use tax on them. Taxpayer protested these assessments, and a telephone hearing was held.

I. State Gross Retail Tax—Adequate Documentation

DISCUSSION

By the hearing date taxpayer had secured additional exemption certificates for the Department's review.

This issue revolves around the burden of proof in an audit situation, which IC § 6-8.1-5-4 defines as:

Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts, and canceled checks.

Subject to the guidelines above, the Department will grant credit for the applicable transactions for which a valid exemption certificate has been provided. Also, as required by the above guidelines, no credit will be granted for transactions for which no certificate has been provided. Pursuant to the above statute and the requirements of IC § 6-8.1-5-1 and 45 IAC 15-5-4, taxpayer has established a basis for reversal of part of the sales tax assessment.

By the hearing date taxpayer had also provided sufficient documentation to establish that its purchases for the business were exempt purchases and no use tax should be assessed on them.

FINDING

Taxpayer's protest is sustained.

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